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HOUSE BILL 250

48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007

INTRODUCED BY

Daniel P. Silva

AN ACT

RELATING TO PUBLIC PROPERTY; AUTHORIZING THE STATE
TRANSPORTATION COMMISSION TO DESIGNATE, DEDICATE OR MEMORIALIZE
PUBLIC HIGHWAYS AND STRUCTURES BY NAME SUBJECT TO LEGISLATIVE
APPROVAL.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 67-3-12 NMSA 1978 (being Laws 1929,
Chapter 110, Section 1, as amended) is amended to read:

"67-3-12. POWERS AND DUTIES.--In addition to the powers
now conferred upon it by law, the state transportation
commission:

A. may declare abandoned and close to public
traffic all grade crossings of railroads by state highways in
cases where grade separations or other adequate crossings are
substituted therefor or where such grade crossings become

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1 unnecessary to the public convenience by reason of changes in
2 highway locations;

3 B. may offer and, upon compliance with the
4 conditions of such offer, pay rewards for information leading
5 to the arrest and conviction of offenders in cases of theft,
6 defacement or destruction of markers or highway signs, lights
7 or other warning devices placed upon or along highways of this
8 state under the supervision of the state transportation
9 commission and for information leading to the arrest and
10 conviction of offenders or for the return of property in case
11 of theft or unlawful damaging of property under the control of
12 the commission. All such rewards when paid shall be paid from
13 the state road fund upon voucher drawn by the secretary or
14 other authorized officer or agent of the department;

15 C. shall prescribe by rule the conditions under
16 which pipelines, telephone, telegraph and electric transmission
17 lines and ditches may be placed along, across, over or under
18 public highways in this state and shall forcibly remove or
19 cause to be removed pipelines, telephone, telegraph or electric
20 transmission lines or ditches that may be placed along, across,
21 over or under such public highways in violation of such rules
22 and regulations;

23 D. shall employ an attorney to assist and advise
24 the state transportation commission and the department in the
25 discharge of their duties and to appear and represent the

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1 interests of the commission or department in any case before
2 any court or tribunal in which the official duties, powers,
3 rights or privileges of the commission or department may be
4 involved or affected and to pay that attorney the reasonable
5 value of the attorney's services out of the state road fund;

6 E. shall bring and maintain in the name of the
7 state actions and proceedings deemed necessary by the state
8 transportation commission for the condemnation of rights of way
9 for public highways or for the removal or condemnation of
10 buildings or other improvements that encroach in whole or part
11 upon the rights of way of public highways or for the
12 condemnation of gravel pits or other deposits of materials or
13 supplies suitable for the construction of public highways.

14 The attorney general of New Mexico shall appear in and
15 prosecute all such cases on behalf of the state upon request of
16 the state transportation commission. All such proceedings
17 shall be conducted in the same manner as other cases for the
18 condemnation of real property. The damages assessed in
19 proceedings brought under the provisions of this section shall
20 be paid out of the state road fund from money furnished for
21 that purpose by cooperative agreement between the state,
22 federal government and the county within which the condemned
23 property is situate or any such governmental bodies or out of
24 money furnished for the construction of the highway in
25 connection with which the condemnation is had, by the county in

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1 which the condemned property is situate; provided, however,
2 that if no such money is available, the damages shall be
3 advanced on behalf of said counties out of their money in the
4 state road fund and the state treasurer shall thereafter
5 reimburse the state road fund for the money advanced out of the
6 next installment of money from motor vehicle license fees
7 accruing to the road fund of the county for which such funds
8 were so advanced;

9 F. shall designate in its discretion one of its
10 employees as acting secretary to act at all times when the
11 secretary is absent from the state capital. The acting
12 secretary, when designated, has the right and is hereby given
13 authority at all times when the secretary is absent from the
14 state capital to sign all federal project statements, federal
15 project agreements and federal vouchers with the same force and
16 effect as if signed by the secretary in person, and the
17 certificate of the acting secretary attached to any federal
18 project statement, federal project agreement or federal voucher
19 to the effect that the secretary was absent from the state
20 capital at the time that the same was so signed by the acting
21 secretary shall be conclusive evidence of the truth of such
22 fact. The acting secretary may also be vested by the state
23 transportation commission with power and authority to act for
24 the secretary in such other matters as the state transportation
25 commission may determine;

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1 G. subject to the provisions of Subsection H of
2 this section, may conduct, permit or authorize commercial
3 enterprises or activities on department- or commission-owned
4 land or land leased to or from the department for the purpose
5 of providing goods and services to the users of the property or
6 facilities on the land, including commercial enterprises or
7 activities, other than commercial enterprises or activities on
8 a controlled-access facility conducted, permitted or authorized
9 pursuant to Section 67-11-9 NMSA 1978. In furtherance of these
10 commercial enterprises or activities, the commission may:

11 (1) authorize the lease of department- or
12 commission-owned land as it deems necessary, in which case
13 consideration for the lease shall be payments in cash or cash
14 equivalent that shall be deposited into the state road fund; or

15 (2) authorize the sale or exchange or lease
16 with in-lieu value consideration of department- or commission-
17 owned land; provided that the sale or exchange or lease with
18 in-lieu value shall be subject to the ratification and approval
19 by joint resolution of the state legislature prior to the sale
20 or exchange or lease with in-lieu value becoming effective;

21 [~~and~~]

22 H. for the purposes of Subsection G of this
23 section, shall:

24 (1) adopt rules necessary to carry out the
25 provisions of Subsection G of this section;

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1 (2) prior to initiating any action to conduct,
2 permit or authorize commercial enterprises or activities, adopt
3 a rule providing a procedure to involve residents of the
4 municipality or county in which the commercial enterprises or
5 activities are proposed to occur in the department's planning
6 and decision-making process for the sole purpose of advising
7 the commission and department on the feasibility and
8 suitability of the proposed commercial enterprises or
9 activities;

10 (3) comply with the Procurement Code in the
11 acquisition process whenever commercial enterprises or
12 activities result in the commission or department acquiring
13 construction, services or tangible personal property, as those
14 terms are defined in the Procurement Code;

15 (4) if the commercial enterprises or
16 activities are to be developed or operated by a private entity,
17 direct that private entity to:

18 (a) create its plans to be not
19 necessarily in compliance but generally compatible with local
20 zoning and land use policies, including affordable housing and
21 historic and architectural standards, if any, and, to the
22 extent the private entity will obtain water or other services
23 from a local authority, negotiate an agreement between relevant
24 parties for those services, the terms and conditions of which
25 shall be no more stringent than the local authority's then

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1 current laws, rules and policies; and

2 (b) submit its plans to the local zoning
3 and land use authority for comment. The local authority shall
4 communicate its recommendations and comments in writing to the
5 department and private entity within thirty days of receiving
6 the plans. The department, commission and private entity shall
7 take no action on the project in reliance on those plans until
8 they have received the local authority's recommendations and
9 comments or until the thirty-day comment period has expired,
10 whichever comes first; provided that the local authority's
11 approval is not required under this section, and this section
12 does not delegate to the local authority power that it does not
13 otherwise have; and

14 (5) not use the power of eminent domain to
15 acquire land to be developed or operated by a private entity;
16 and

17 I. may designate, dedicate or memorialize a public
18 highway or structure by name, subject to the approval of the
19 legislature. For the purpose of this subsection, "structure"
20 means a bridge, interchange, transportation facility or
21 building owned or controlled by the department."

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